

JOHN JONES.

[To accompany bill H. R. No. 425.]

MAY 25, 1842.

Mr. COWEN, from the Committee of Claims, submitted the following

REPORT :

The Committee of Claims, to which was referred the petition of John Jones, report :

That this claim has been several years before Congress. May 24, 1838, the Committee of Claims reported to the House upon it. As that report gives some facts in the history of the proceedings of Congress in reference to the claim, and as the committee now concur in the views therein expressed, the report is given entire.

“Mr. E. WHITTLESEY, from the Committee of Claims, to which was referred the petition of John Jones, for himself and C. Souder, report :

“That the Committee of Claims, on the 2d of July, 1836, made a report on the petition, which concluded with a resolution to refer the several claims mentioned in the petition to the Secretary of War, to take testimony, and to ascertain the balance due, if any, to the said Jones, for work performed and materials furnished, in the years 1829 and 1830, at the Pea-patch island ; and also to ascertain what balance, if any, is due to John Jones, Charles Souder, and others, for work done and materials furnished in constructing a wall and embankment around said Pea-patch island, under a contract made July 31, 1830 ; and that said Secretary ascertain whether there was any default or neglect, on the part of the United States, in complying with its part of the contract for furnishing stone for building said wall round the island, and what amount of damage, if any, said contractors suffered by the alleged neglect of the United States in furnishing stone.

“The House concurred in this resolution the day it was reported.

“The duty of taking the testimony and of examining the facts appears to have been confided to Captain Delafield. His report in the case, addressed to General Gratiot, accompanied by all the testimony taken, was sent to the House by the Secretary of War, and by the House was referred to the Committee of Claims, with the petition and other papers. Captain Delafield has given to the case a very full and minute examination, and his report is very clear on the different points investigated.

“The committee and Congress have been saved much labor by referring the subject to the Secretary of War ; and the manner in which Captain Delafield has discharged the trust confided to him has probably elicited the whole truth on the different subjects of investigation.

"The committee do not think it is necessary to go into an examination of the testimony, as that has been done by Captain Delafield : and they will refer to his report and to his comments on the testimony taken and reported. He recommends the following items for payment :

"Item three of Jones and Souder's account, due them -	-	\$22 48
"Item six do. do. do. due them -	-	108 15
"Item A of Robinson, Carr, & Co.'s account, due them; for so much of this item as relates to repairs of certain breaches made by the storm of the 29th November, 1830 -	-	50 00
"Item C of Robinson, Carr, & Co.'s account, due them -	-	119 20
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		\$299 83

"The item marked three is for work done in repairing the breaches made in the dike by the gale of November, 1830.

"The United States do not remunerate for losses occasioned by such disasters, unless they bind themselves to do so in the contract. That is not the case here. The committee therefore reject this item, \$22 48.

"Item six. This is for expense in unloading stone, which was to have been incurred by the United States, and should be allowed - - - - - \$108 15

"Item A of Robinson, Carr, & Co.'s account is for expenses in repairing breaches in the dike, occasioned by the storm in November.

"On the principle mentioned above, this should be rejected, \$50.

"Item C of Robinson, Carr, & Co.'s account. This is similar to item six, and should be allowed - - - - - 119 20

\$227 35

"For this amount the committee report a bill."

This claim is again pressed upon the consideration of Congress; and, though the papers are many and voluminous, the committee have examined them with so much care as to be satisfied with the correctness of the conclusion of the committee in 1838. A principal matter of complaint with the petitioner is, that the United States did not supply him with stone for the wall which he, with others, had contracted to build around Pea-patch island, in 1830, as they were bound to do, and that, by reason thereof, he sustained great damage. As this branch of the claim is now pressed with much zeal, the committee have thought proper to state the reasons which have brought them to the conclusion that it ought not to be allowed.

The contract for the construction of the wall and embankment around the island was made by John Hemphill, Joseph Carr, Albert Robinson, Gideon Jacques, John Jones, and Charles Souder, jointly. By a separate contract with the United States, as it is represented, the four first-named parties to the contract for building the wall were to furnish one-half of the stone for the wall. This contract for furnishing the stone was not fulfilled, it is said, and hence the damage principally, if not wholly. It seems to the committee that whatever damage may have resulted from this cause is not a good ground of claim against the United States. The delay in furnishing the stone was the act of the partners of the petitioner. The assent

of his partners to an extension of the time would be binding upon him. The mission, being in violation of their contract, is certainly conclusive evidence that they were assenting to it, at least for the purpose of protecting the United States from liability for any resulting damage.

Mr. Jones represents that the contract for building the wall and embankment was divided between him and his partners; that he and Souder were to construct one division of it, and the other contractors the other. To this the United States were no parties. The Government can do no other than treat the contractors as joined in interest. Their contract of severance concerned themselves. To the United States each was liable for all the work, and all were liable for every part of it.

The contract, which bears date July 31, 1830, bound the contractors to finish the work they undertook to perform on or before the 15th of November, 1830. Dr. Thomas was the superintendent of the work on behalf of the United States. He states that, including the stone laid on the wall and not inspected, measured, and received, there were 882 cubic yards of stone on the island on the 31st day of August, 350 yards on the 30th day of September, 750 yards on the 31st of October, 1,630 yards on the 30th of November, and 400 yards on the 31st of December. He states that, if there had been a scarcity of stone, he should have known it. Three witnesses, who were employed to lay stone on the contracts, testify that there was a deficiency in the supply of stone, and that the work was delayed, in consequence thereof, on that part of the work where they were employed. They do not know how the fact was, as to a supply of stone, on other parts of the work. This evidence shows that there was stone sufficient for prosecuting the work, though perhaps not at the point most favorable for the petitioner; but there is doubt whether, if there had been a failure to furnish stone, and no acquiescence in the delay, the damage claimed could be allowed. It is alleged that the embankment made by the contractors was washed away, and other damage was done by a rise of water, which would not have happened if the wall had been finished. This consequence is too remote to be the basis of a claim for damage. It resulted from a cause that the United States cannot be held liable for. To hold a party liable for losses of this kind, he must be an insurer for a consideration. The same rule which would require the United States to pay this damage would require the petitioner to pay any damage sustained by that flood, which the completion of the wall would have prevented, provided it should appear that the delay was the fault of the petitioner. This rule for the measure of damages would be novel, and the committee think it should not be adopted. The non-payment of money when it is due subjects the debtor to the payment of interest, and nothing more, as damage, though the creditor may have had his property sold for half its value for the want of the money. If a mechanic should undertake to erect a building for a farmer, to secure his crop, to be completed at a given time, and should fail to fulfil his contract to a day, and the crop should be therefore lost, the mechanic would not be held liable for the loss. The injury is not produced by the failure to complete the building, but it might have been avoided had there not been the failure. So here. The non-delivery of the stone would not have destroyed the embankment, though, had the stone been delivered, possibly, and perhaps probably, the wall would have been built, and the embankment saved. A bill is herewith reported in conformity with the views of the former committee.

